IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
ARBITRATION PETITION NO.06 OF 2004

Indicus Software Pvt.Ltd. Petitioner

Vs.

Ms.Radhika Kelapure Respondent

Ms.Lalita Panchakshari for petitioner.
Mr.Geogy Jacob for respondent.

CORAM: B.H.MARLAPALLE, J.

January 27, 2006.

P.C.

1. Heard Mrs.Panchakshari, the learned counsel for the petitioner-Company. The respondent was appointed initially as a software trainee on probation for six months and her appointment was confirmed on 11th August 2002 on the same terms and conditions which were set out in the earlier appointment. On 11th Decemeber 2002 a notarised minimum tenure agreement was placed before her which she signed and one of the clauses in the said agreement pertained to the respondent's commitment to work at least for a minimum period of one and half years with effect from the date of confirmation i.e. 11-8-2002.

2. However, by a letter dated 25th April 2003 the respondent informed that due to some unavoidable reasons it would not be possible to remain in the employment of the petitioner any further and, therefore, she requested for being relieved on 30th April 2003. In response, the petitioner vide its letter dated 6th May 2003 turned down the request to accept the resignation and called upon her to reimburse the costs incurred and also to pay the liquidated damages to the extent of Rs.2 lakhs in terms of the minimum tenure agreement. The respondent by her letter dated 15th May 2003 agreed to pay the salary of three months in lieu of notice. This petition has been filed invoking the clause of arbitration in the minimum tenure agreement i.e. clause no.10.

3. It is noted that the said clause no.10 is part of the appointment letter dated 11th February 2002 and it has been corrected and signed on 11-12-2002 after it was notarised. The said document cannot be termed as a commercial relationship of contract between the petitioner on the one hand and the respondent on the other hand. It was clear that between the parties there was a relationship of

employer/employee and the grievance raised in this application could be at the most termed as an industrial dispute which requires to be resolved by invoking the remedy available under the Industrial Disputes Act, 1947.

4. The application is hereby rejected as not maintainable under Section 11 of the Arbitration and Conciliation Act, 1996.

(B.H.MARLAPALLE,J.)